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July 17, 2000

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 Room TW-B204
 445 12th Street, S.W.
 Washington, DC 20554

Re: Petition for Rulemaking to Amend Section
 73.606(b) of the Commission's Rules
Channel 25 - Knoxville, Tennessee

Dear Ms. Salas:

Transmitted herewith are an original and four copies of a Petition for Rulemaking to amend Section 73.606(b) of the Commission's rules.

Please be advised that this rulemaking petition is being filed pursuant to *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations"), as extended by *Public Notice*, 15 FCC Rcd 4974 (2000).

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
 FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
 Counsel for South Central
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Enclosure

cc (w/ encl.): Certificate of Service (by hand)
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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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JUL 17 2000
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b)) MM Docket No. _____
TV Table of Allotments) RM No. _____
TV Broadcast Stations)
(Knoxville, Tennessee))

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

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July 17, 2000

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SUMMARY

As demonstrated herein, the existing NTSC Channel 26 allotment at Knoxville, Tennessee, has effectively been displaced by a co-channel DTV allotment in the same community. Accordingly, pursuant to the Commission's November 22, 1999, *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations") ("*Window Filing Notice*"), the pending mutually exclusive applicants ("Petitioners") for a construction permit for a new television station to operate on Channel 26 at Knoxville request that the Commission amend the NTSC Table of Allotments by substituting Channel 25 for the existing Channel 26 allotment at Knoxville.

Although the Petitioners have made every effort to find an alternative channel/transmitter site combination that would be fully-spaced to all NTSC and DTV stations, the proposed allotment of Channel 25 at Knoxville would result in a minor short-spacing to co-channel Station WHIQ(TV), Huntsville, Alabama. However, through the use of equivalent protection, the proposed allotment would cause no more interference to the Huntsville station than a fully-spaced allotment. Moreover, through a Longley-Rice interference analysis, Petitioners have demonstrated that the proposed NTSC facility at Knoxville would cause less than 0.5% interference to Station WHIQ.

Furthermore, a grant of this rulemaking petition and the accompanying short-spacing waiver request would help foster the development of new national networks by providing an additional competitive broadcast outlet in a top 100 television market with which to establish a primary affiliation. In addition, the proposed allotment would bring a new television service to a substantial number of people in the Knoxville area, provide an opportunity for new entry and promote diversity in the Knoxville television market, and increase competition in the local advertising market.

Moreover, because the *Window Filing Notice* represents the last opportunity to amend the NTSC Table of Allotments, a grant of the requested waiver would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy* and *VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

For all of these reasons, Petitioners request that the Commission amend the TV Table of Allotments by substituting Channel 25 for the existing Channel 26 allotment at Knoxville, Tennessee.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. _____
TV Table of Allotments)	RM No. _____
TV Broadcast Stations)	
(Knoxville, Tennessee))	

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

SWMM/Knoxville Corporation ("SWMM"), Channel 26, Ltd. ("Limited"), and South Central Communications Corporation ("SCC") (collectively, "Petitioners"), through their respective counsel, and pursuant to Section 1.401 of the Commission's rules and *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations") ("*Window Filing Notice*"),¹ hereby request that the Commission institute a rulemaking proceeding for the purpose of amending the TV Table of Allotments to substitute Channel 25 for the existing Channel 26 allotment at Knoxville, Tennessee. Accordingly, Petitioners propose to amend Section 73.606(b) of the Commission's rules as follows:

¹ On March 9, 2000, the Commission extended the window filing period until July 15, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) ("Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations Extended to July 15, 2000").

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Knoxville, Tennessee	6, 8, 10+, *15-, 26-, 43+	6, 8, 10+, *15-, 25 , 43+

In support of this Petition, Petitioners state the following:

I. Background.

Petitioners have mutually exclusive applications pending for a construction permit for a new television station to operate on Channel 26 at Knoxville, Tennessee.² Subsequent to the filing of their applications, Congress added Section 309(l) of the Communications Act of 1934, as amended (the “Act”), directing the Commission to waive certain of its rules to encourage settlements among mutually exclusive broadcast applicants.³ Accordingly, on January 28, 1998, Petitioners filed a “Joint Request for Approval of Universal Settlement” (“Joint Request”) requesting approval of two separate settlement agreements which contemplated the grant of SCC’s application and the dismissal of SWMM’s and Limited’s respective pending applications. Petitioners’ Joint Request has remained pending before the FCC for nearly two and one-half years.

On November 22, 1999, the Commission released the *Window Filing Notice*, which provides NTSC applicants an opportunity to modify their pending proposals to eliminate technical conflicts with DTV stations and/or move from channels 60-69. The *Notice* specifically stated that pending “freeze” waiver applicants for new NTSC stations proposing to operate on channels 2-59 would be

² See File Nos. BPCT-890405KF; BPCT-890913KG; and BPCT-960920LJ.

³ See 47 U.S.C. §309(l).

afforded an opportunity to amend their respective NTSC proposals through the filing of a rulemaking petition seeking a channel below Channel 60.⁴

II. Technical Proposal.

As demonstrated in the attached engineering statement of Neil M. Smith, SCC's⁵ pending proposal to operate on Channel 26 at Knoxville would cause unacceptable interference to a co-channel DTV facility in the same community. *See Engineering Statement*, p. 1. As a result, pursuant to the *Window Filing Notice*, Petitioners request that the FCC amend the NTSC TV Table of Allotments by substituting Channel 25 for the existing Channel 26 allotment at Knoxville.

SCC has searched diligently for an alternative channel/transmitter site combination for the proposed allotment at Knoxville that would be fully-spaced to all other NTSC and DTV stations. SCC's efforts, however, have been unsuccessful. As demonstrated in Mr. Smith's attached engineering statement, from the allotment reference point,⁶ the proposed allotment of Channel 25 at Knoxville is short-spaced to co-channel Station WHIQ(TV), Huntsville, Alabama, by 5.8

⁴ Each of the Petitioners requested a waiver of the ATV "freeze" in their respective applications. *See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed.Reg. 28346 (1987) ("*Freeze Order*"). To the extent it is necessary, Petitioners hereby reiterate their respective requests for waiver of the ATV freeze.

⁵ As stated above, SCC is the surviving applicant under the Petitioners' settlement proposal.

⁶ The reference coordinates for the proposed allotment are North Latitude: 36° 00' 36"; West Longitude: 83° 55' 57". *See Engineering Statement*, p. 1 and Exhibit D. These coordinates represent SCC's proposed transmitter site, which is an existing tower structure located at Sharp's Ridge. *Id.* at 1, 4 and Exhibit D (referencing Antenna Structure Registration No. 1043696).

kilometers.⁷ *Id.* at 1-2 and Exhibit B. Accordingly, Petitioners are submitting below a request for waiver of Sections 73.610 and 73.685(e) of the Commission's rules concerning the above-described short-spacing. As demonstrated therein, a grant of the requested waiver would provide substantial public interest benefits, and would result in no more interference to the short-spaced station than a fully-spaced allotment. Indeed, as demonstrated in the attached engineering statement, the proposed allotment of Channel 25 at Knoxville would not cause any harmful interference to co-channel Station WHIQ because that station can be protected through the use of equivalent protection. *See* Engineering Statement, pp. 2-3. Moreover, in conducting an interference analysis using the same methods that are employed in establishing DTV allotments, including a Longley-Rice propagation calculation, Mr. Smith determined that the proposed allotment of Channel 25 at Knoxville would cause less than 0.5% interference to Station WHIQ, which is within the FCC's rounding tolerance.⁸ *See* Engineering Statement, p. 3. Therefore, the proposed allotment of Channel 25 at Knoxville would enable a new full-service television station to commence operation from the proposed

⁷ The proposed allotment also is short-spaced to a vacant noncommercial Channel 24 allotment at Athens, Tennessee. *See* Engineering Statement, p. 1 and Exhibit B. The Commission has stated, however, that those NTSC allotments which are not the subject of a pending application or rulemaking proceeding would be deleted. *See Sixth Report and Order* in MM Docket No. 87-268, *Advanced Television Systems and Their Impact Upon the Existing Broadcast Service*, 12 FCC Rcd 14588, 14639 ¶112 and n.192 (1997). *See also Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1438, 1466 ¶39 (1998). With respect to vacant noncommercial allotments, the Commission specifically stated that the DTV Table replaced those existing noncommercial NTSC allotments with a new noncommercial DTV allotment. 12 FCC Rcd at 14639, ¶112. Therefore, Petitioners should not be required to protect the vacant Channel 24 allotment at Athens.

⁸ *See Report and Order* in MM Docket No. 00-10, *Establishment of a Class A Television Service*, FCC 00-115, ¶74 (released April 4, 2000) (NTSC applicants allowed a rounding tolerance of 0.5% in protecting DTV stations).

transmitter site with 5,000 kilowatts directional effective radiated power at an antenna height of 367 meters above average terrain without adversely affecting any other television station. The proposed new NTSC station would bring a new television service to a substantial number of viewers in the Knoxville area, and would provide an 80 dBu contour to the entire community of Knoxville.⁹ *Id.* at 2.

III. Request for Waiver of the FCC's Distance Separation Requirements.

Petitioners respectfully request that the Commission waive the minimum distance separation requirements contained in Section 73.610 of the Commission's rules in order to permit the proposed allotment.¹⁰ As demonstrated in greater detail herein, a grant of the requested waiver would promote the emergence of new national television networks by providing an additional competitive broadcast outlet in a top 100 television market with which to establish a primary affiliation. Moreover, strict adherence to the Commission's distance separation requirements in this case would achieve a result

⁹ Petitioners note that the proposed allotment of Channel 25 at Knoxville may pose interference concerns with respect to Low Power Television Station WXMS-LP, Cleveland, Tennessee, which filed a "Statement of Eligibility for Class A Low Power Television Station Status" ("Eligibility Statement") on January 28, 2000. Station WXMS-LP is located approximately 20 miles from Chattanooga, Tennessee, and is well within the predicted Grade A contour of co-owned full-service Station WDSI-TV, Chattanooga. Exhibit 1 to WXMS-LP's Eligibility Statement makes abundantly clear that during the 90-day period preceding the enactment of the Community Broadcasters Protection Act of 1999 and continuing through January 2000, Station WXMS-LP functioned merely as a translator of Station WDSI-TV. (A copy of WXMS-LP's Eligibility Statement is appended hereto.) The Commission recently affirmed that it will subsequently initiate a separate proceeding to determine whether, and to what extent, primary service status should be afforded to TV translators. *See Public Notice*, DA 00-1228 (released June 7, 2000) ("Dismissal of TV Translator Licensee Certificates of Eligibility for Class A Television Station Status"). Therefore, the technical proposal contained herein does not protect Station WXMS-LP.

¹⁰ As indicated in the attached Engineering Statement, Petitioners also request a waiver of Section 73.685(e) of the Commission's rules. *See Engineering Statement*, p. 2.

contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

A. The Commission Previously Has Waived the Distance Separation Requirements to Permit the Allotment of New Television Stations.

In Docket No. 13340,¹¹ the Commission instituted a rulemaking proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system. The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacings. The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a "squeeze in" procedure would be considered. Many of these proposals, as well as those which arose out of the Commission's *Interim Policy*, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. *See, e.g., Grand Rapids, Michigan*, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market);¹²

¹¹ *Interim Policy on VHF Television Channel Assignments*, 21 RR 1695 (1961), *recon. denied*, 21 RR 1710a (1961) ("*Interim Policy*").

¹² In *Grand Rapids*, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of Channel 7 for a Channel 9 allotment at Alpena, Michigan. *Id.* at 1745. The Commission's action was designed to alleviate the "critical shortage of competitively comparable facilities in
(continued...)

Rochester, New York, 21 RR 1726a (1961) (FCC assigned third commercial VHF station to the community); *Syracuse, New York*, 21 RR 1754 (1961) (same).

The proposed allotment of Channel 25 at Knoxville would not be the first time that the Commission has granted a short-spaced allotment to that community. In *VHF Top 100 Markets*,¹³ the Commission granted requests for waiver of Section 73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each of these short-spaced allotments was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. *Id.* at 234.

In granting the petitioners' waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from past Commission practice.¹⁴ Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. *Id.* at 253. Moreover, on reconsideration, the Commission concluded that

¹²(...continued)
major markets" 21 RR at 1745.

¹³ *Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming*, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233 (1980) ("*VHF Top 100 Markets*"), *recon. denied*, 90 FCC 2d 160 (1982), *aff'd sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

¹⁴ Despite the Commission's *Interim Policy*, there had been no short-spaced VHF allotments in the continental United States prior to its decision in *VHF Top 100 Markets*. 81 FCC 2d at 239.

application of the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the *Sixth Report and Order* in Docket Nos. 8736 *et al.*, *Amendment of Section 3.606 of the Commission's Rules and Regulations*, 41 FCC 126 (1952).

This rulemaking petition and accompanying waiver request provide another opportunity for the Commission to fulfill the public interest objectives articulated in the *Interim Policy* and *VHF Top 100 Markets*. By waiving the minimum distance separation requirements and allotting Channel 25 to Knoxville, the Commission can help foster the development of new national networks, such as the WB Television Network ("The WB"), the United Paramount Network ("UPN"), and the Paxson Network by providing an additional competitive broadcast outlet in a top 100 television market¹⁵ with which to establish a primary affiliation.¹⁶ In addition, the allotment of Channel 25 to Knoxville would bring a new local television service to a substantial number of viewers in the Knoxville area, provide an opportunity for new entry into the television broadcast industry, promote viewpoint diversity in the Knoxville television market, and increase competition in the local advertising market.

¹⁵ The Knoxville market currently is the 63rd television market. *See Broadcasting & Cable*, p. 246 (2000).

¹⁶ The WB and UPN have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.*, Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (filed Aug. 22, 1994); Comments of the UPN, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

Indeed, in light of the Commission's relaxation of the local television ownership rule and the ever increasing consolidation in the broadcast industry, the substantial public interest benefits that would result from this allotment proposal have even more significance today than those that existed at the time the *Interim Policy* and *VHF Top 100 Markets* were adopted. Consistent with the requirements set forth in the *Interim Policy* and *VHF Top 100 Markets*, however, the Commission should condition the proposed allotment upon the new station providing equivalent protection to co-channel Station WHIQ(TV), Huntsville, Alabama, to ensure that WHIQ would be subject to no greater interference from Channel 25 at Knoxville than if the proposed allotment were fully-spaced.¹⁷ See Engineering Statement, pp. 2-3.

B. A Grant of the Requested Waiver Would Not Undermine the Commission's General Policy Regarding Short-Spaced Allotments.

The full Commission articulated its policy regarding short-spaced allotments in *Pueblo, Colorado*, 16 Comm. Reg. (P&F) 610 (1999) (*Memorandum Opinion and Order on Remand*):

[B]y maintaining strict adherence to a fully-spaced allotment scheme, we preserve the capacity to permit necessary adjustments to spacing where the construction of actual facilities so requires, while minimizing potential adverse interference effects from such adjustments. This is because, when a party files a petition for rulemaking to amend the Table of Allotments, a hypothetical set of reference coordinates are used for purposes of making the allotment. The petitioner is not required to specify an actual transmitter site where the station will be operated, only a theoretical fully-spaced transmitter site location. At this point, the Commission disfavors making a short-spaced allotment because it does not want to begin the process with a substandard allotment. In order to protect the integrity of the Table, the Commission

¹⁷ In the *Interim Policy*, the Commission noted that short-spaced allotment stations could provide "equivalent protection" to existing stations by reducing their effective radiated power, using a reduced antenna height, using a directional antenna, or employing a combination of these techniques. See *Interim Policy*, 21 RR at 1699. See also *VHF Top 100 Markets*, 81 FCC 2d at 256 (because the Commission required the drop-ins to provide equivalent protection, the potential interference to existing short-spaced stations would be no greater than any other allotment that had been made since the Table of Allotments was created).

demands that the process of creating a new station begin with an allotment that is not already short-spaced. However, later, when a party files an application to construct its actual transmitter site, and the Commission examines the actual facilities that will be constructed to operate the station, it may be determined that no fully-spaced transmitter sites are available. At that later point in the process, the Commission may allow a deviation of its spacing rules when it is demonstrated that the public interest benefits are great enough to support a waiver.

Consistent with that approach, we have only permitted short-spaced allotments where the petitioner has demonstrated a “compelling need for departure from the established interstation separation standards.”

Id. at 616, ¶¶23-24 (citations omitted). The full Commission has also stated that “[s]trict adherence to the spacing requirements set forth in the Table of Allotments is necessary . . . in order to provide a consistent, reliable and efficient scheme of [allotments].” *Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990).

Petitioners respectfully submit that the substantial public interest benefits that would result from the proposed allotment of Channel 25 to Knoxville more than satisfy the Commission’s “compelling need” standard. However, even assuming, *arguendo*, that the Commission were to conclude that the significant public interest objectives articulated in the *Interim Policy* and *VHF Top 100 Markets* -- which would be promoted by a grant of Petitioners’ petition -- are insufficient to warrant the proposed short-spaced allotment, the Commission’s general policy regarding short-spaced allotments should not be applied in this case. Indeed, the public interest benefits that would result from the proposed allotment substantially outweigh the Commission’s general regulatory interest in protecting the “integrity of the Table of Allotments,” especially considering that the proposed allotment would subject Station WHIQ to no greater interference than a fully-spaced allotment.

As reflected in the Commission's *Memorandum Opinion and Order on Remand in Pueblo, Colorado*, by requiring that a proposed allotment be fully-spaced at the outset, the Commission's general allotment policy is designed to "minimiz[e] potential adverse interference effects" that may result from "necessary adjustments" in the event no fully-spaced transmitter sites are available at the application stage. However, contrary to the Commission's general statement in *Pueblo, Colorado*, the proposed allotment reference point in this case does not represent a "hypothetical set of reference coordinates," but, instead, represents an existing tower structure at Sharp's Ridge upon which SCC intends to locate its transmitter. Thus, although the proposed allotment reference point has not yet been specified in a construction permit application for the Channel 25 facility at Knoxville, the allotment reference point is an available transmitter site in accordance with Section 73.611(a)(4) of the Commission's rules.¹⁸

Moreover, as demonstrated in Mr. Smith's attached engineering statement, not only is Channel 25 the only remaining analog channel available for use at Knoxville, but the proposed allotment reference point is the only suitable transmitter site for the proposed allotment because the proposed new NTSC station must be co-located with the DTV Channel 26 facility at Knoxville, which also will be located at Sharp's Ridge. See Engineering Statement, p. 4. As Mr. Smith explains, if there were a suitable fully-spaced transmitter site at least 5.8 kilometers east of SCC's

¹⁸ In a related context, the Commission has not hesitated to allot a new channel based upon the reference coordinates of a petitioner's proposed transmitter site. For example, in *Virginia Beach, Virginia*, 11 FCC Rcd 4715 (Allocations Branch 1996), the Commission allotted a new television channel to Virginia Beach even though the center city coordinates of the community of license were within the "freeze zone" established by the ATV freeze. See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed.Reg. 28346 (1987). See also *Wittenberg, Wisconsin*, 11 FCC Rcd 12231 (Allocations Branch 1996) (same).

proposed site (which does not exist), the short-spacing to Station WHIQ would be eliminated. However, the proposed site no longer would be within five kilometers of DTV Channel 26, which would create an interference concern with respect to the adjacent-channel DTV allotment.¹⁹ *Id.* Petitioners believe that the allotment reference point specified in this petition represents the only suitable transmitter site for the proposed allotment, and, thus, that there would be no opportunity for an “adjustment” in the location of the proposed site at the application stage. Petitioners therefore request that the Commission allot Channel 25 to Knoxville with an appropriate site restriction to ensure that the short-spacing between the transmitter site for the proposed Channel 25 facility at Knoxville and Station WHIQ would be no greater than that proposed in this petition.²⁰

Furthermore, Petitioners respectfully submit that the Commission’s interest in maintaining the “integrity of the Table of Allotments” and providing “a consistent, reliable and efficient” allotment scheme should be given less consideration with respect to the rulemaking petitions and amended petitions filed in response to the *Window Filing Notice* because this is the last opportunity to amend the NTSC Table of Allotments. The deadline for filing allotment rulemaking petitions for

¹⁹ Mr. Smith also states that, despite the minor short-spacing to Station WHIQ, the proposed allotment reference point is appropriately located with respect to both NTSC and DTV co-channel assignments. Although a transmitter site further to the east would alleviate the spacing deficiency with respect to WHIQ, it would place the proposed allotment closer to co-channel Station WUNF-DT, Asheville, North Carolina, which it may not be able to adequately protect. Similarly, a transmitter site further west would simplify the protection of WUNF-DT, but would exacerbate the spacing problem with respect to WHIQ, making it more difficult to afford the co-channel NTSC station equivalent protection. *See* Engineering Statement, p. 4.

²⁰ As stated above, the proposed allotment of Channel 25 at Knoxville is 5.8 kilometers short-spaced to co-channel Station WHIQ(TV), Huntsville, Alabama. *See* Engineering Statement, pp. 1-2 and Exhibit B. However, the degree of short-spacing presented by this proposal is well within the range of short-spacings that the Commission has approved in the past. *See, e.g., Sarks Tarzan, Inc.*, 6 FCC Red 2465 (1991) (8.3 mile short-spacing approved); *Clay Broadcasting Corp.*, 51 R.R.2d 916 (1982) (five mile short-spacing approved)

new NTSC stations expired on July 25, 1996.²¹ Upon the close of this window filing period on July 17, 2000, there will be no further opportunity to amend the NTSC Table of Allotments. Therefore, because the allotment proposals filed during this window represent the last NTSC rulemaking petitions that will ever be filed with the Commission, a waiver of the Commission's distance separation requirements pursuant to the policy objectives set forth in the *Interim Policy* and *VHF Top 100 Markets* would not open the floodgates to similar waiver requests in the future. As in *VHF Top 100 Markets*, the *Window Filing Notice* provides a limited filing opportunity during which there can be only a small, finite number of short-spaced allotment proposals that would provide sufficient public interest benefits to warrant a waiver of the spacing rules.

Further, due to the relatively short time period before the end of the NTSC/DTV transition period, which is scheduled to occur at the end of 2006, the minor short-spacing that would result from the proposed allotment of Channel 25 at Knoxville is essentially an interim proposal. At the end of the transition period, when television stations are required to return one of their paired channels, the proposed Channel 25 facility at Knoxville will be able to move to a fully-spaced channel for its DTV operation. In light of the substantial likelihood that: (i) the Commission will not grant this petition, grant Petitioners' pending settlement proposal, and issue a construction permit for the proposed Channel 25 facility at Knoxville before the first quarter of next year; and (ii) it will take SCC approximately one year to complete construction of the new television station; the proposed Channel 25 facility at Knoxville is not likely to commence operation until sometime in 2002. Assuming that the transition period ends as scheduled, this would mean that the proposed new

²¹ See *Sixth Report and Order* in MM Docket No. 87-268, *Advanced Television Systems and Their Impact Upon the Existing Broadcast Service*, 12 FCC Rcd 14588, 14635-36 (1997).

NTSC station at Knoxville would operate from a short-spaced allotment for a period of less than five years before moving to a fully-spaced digital allotment.

Many industry observers believe, however, that although the DTV transition period is scheduled to end in 2006, due to the market penetration requirement contained in Section 309(j) of the Act, 47 U.S.C. §309(j)(14)(B), the transition deadline may be extended.²² Even assuming, *arguendo*, that the transition deadline is extended by several years, the substantial public interest benefits that would result from having the proposed Knoxville television station commence operation prior to the end of the transition period greatly outweigh the Commission's general policy of "protecting the integrity of the Table of Allotments" in this narrow context in which the licensing of analog television stations has come to an end.²³

C. The FCC Must Give This Waiver Request the Requisite "Hard Look."

It is well established that the Commission is "required to give waiver requests a 'hard look' and may not treat well-pleaded waiver requests in a perfunctory manner." *VHF Top 100 Markets*, 90 FCC 2d 160, 166 (1982) (reconsideration order), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Indeed, as the D.C. Circuit has made clear:

. . . [A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the "public interest" if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.

WAIT Radio, 418 F.2d at 1157. Therefore, in considering this waiver request, Petitioners respectfully submit that the Commission must look beyond its general policy regarding short-spaced

²² See, e.g., *Completing the Transition to Digital Television*, Congressional Budget Office, Congress of the United States (Sept. 1999).

²³ See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd at 14639 ¶12.

allotments, and determine whether the rationale underlying that policy would be undermined in light of the substantial and broad-reaching public interest benefits that would result from a waiver of its spacing rules, especially considering the unique and extremely limited context in which this waiver request is presented.

IV. Conclusion.

As demonstrated above, a grant of this petition and the accompanying waiver request would provide substantial public interest benefits by providing an additional competitive broadcast outlet in a top 100 television market, which would help foster the development of new national networks. At the same time, the proposed allotment would bring a new local television service to a substantial number of viewers in the Knoxville area, promote viewpoint diversity in the Knoxville television market, and increase competition in the local advertising market. Moreover, by granting the proposed allotment with an appropriate site restriction and conditioning the allotment on the use of equivalent protection, the proposed allotment of Channel 25 to Knoxville would create no more interference than a fully-spaced allotment. Furthermore, because this is the last opportunity to amend the NTSC Table of Allotments, a grant of this waiver request would not open the floodgates to similar waiver requests in the future because there can be no further analog allotments after the close of this filing window. Indeed, as the Commission determined in the *Interim Policy* and *VHF Top 100 Markets*, strict adherence to the Commission's distance separation requirements in this case would achieve a result contrary to the public interest by preventing a new and much needed television service, while a waiver of the spacing rules would not undermine the Commission's general allotment policy.

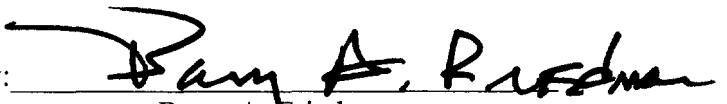
For all of these reasons, Petitioners request that the Commission amend the TV Table of Allotments by substituting Channel 25 for the existing Channel 26 allotment at Knoxville, Tennessee. In the event Channel 25 is allotted to Knoxville, SCC, the surviving applicant under the Petitioners' pending settlement proposal, will amend its pending application in accordance with the Report and Order issued in this proceeding to specify the new channel, and modify its technical proposal as necessary so that the proposed Channel 25 NTSC facility will not cause harmful interference to any other television station. In the event its application is granted, SCC will promptly construct and operate the new NTSC facility.

WHEREFORE, in light of the foregoing, SWMM/Knoxville Corporation, Channel 26, Ltd., and South Central Communications Corporation respectfully request that the Commission GRANT this Petition for Rulemaking, AMEND the TV Table of Allotments, and SUBSTITUTE Channel 25 for the existing Channel 26 allotment at Knoxville, Tennessee.

Respectfully submitted,

SWMM/KNOXVILLE CORPORATION

By:


Barry A. Friedman

By: *Emi*

Its Counsel

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1920 N Street, N.W.
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(202) 973-2789

CHANNEL 26, LTD.

By: Larry Perry
Larry Perry
By: Eni
Its Counsel

11464 Saga Lane
Suite 400
Knoxville, TN 37931-2819
(423) 927-8474

SOUTH CENTRAL COMMUNICATIONS
CORPORATION

By: Edward S. O'Neill
Edward S. O'Neill
Andrew S. Kersting
Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Arlington, Virginia 22209
(703) 812-0400

July 17, 2000

c:\ask...\pleading\KnoxvilleRM.wpd

EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of SOUTH CENTRAL COMMUNICATIONS CORPORATION, applicant for a new analog television station to operate on Channel 26 in Knoxville, Tennessee, in support of its Petition for Rulemaking to change operation to Channel 25. This change is required because Channel 26 has been allotted for digital use in Knoxville.

The reference coordinates for this proposed allotment are 36° 00' 35.9", 83° 55' 56.5", which describe an existing tower from which the Channel 25 facility would operate. Exhibit B is an allocation study which demonstrates that the specified site meets all NTSC spacings, except one. As indicated, there would be a 5.8-kilometer shortage to WHIQ, Channel 25, Huntsville, Alabama. This matter is discussed below. It is also noted that there is an unused Channel 24 allotment in Athens, Tennessee. Since this allotment is not available for application, it could normally be ignored in this study, but this allotment is reserved for noncommercial operation, and the Commission has indicated its interest in perhaps maintaining certain reserved allotments. However, it appears that this particular allotment has become unusable because it would be short-spaced to two co-channel DTV allotments, one co-channel NTSC allotment, and one adjacent-channel DTV allotment.

We have conducted the equivalent of a *de minimis* interference analysis with respect to DTV allotments, similar to that supplied with DTV applications, using the V-Soft

EXHIBIT A

Communications "Probe" computer program, which has been found generally to mimic the FCC's program. The results of the study are included as Exhibit C and show an absence of objectionable interference. This study assumed facilities of 5000 kw, directionally, at 367 meters. Exhibit D is a copy of Page 14 of FCC Form 301 providing the technical specifications of the facility, and Exhibit E provides full data on the specified antenna system.

It will be noted in Exhibit E that the maximum-to-minimum ratio of the proposed directional pattern is 35 db, whereas §73.685(e) specifies that such ratio not exceed 15 db. A waiver of this Rule is therefore requested and would appear to be justified, since such pattern suppression is needed to protect WUNF-DT, Asheville, North Carolina. Absent a waiver, it would be necessary to locate the proposed facility well to the west of the proposed site on Sharp's Ridge at which are located the transmitters of all Knoxville television stations.

Because of the proposed pattern, a question may be raised regarding the coverage of the proposed community of license. Exhibit F is a map on which we have shown the proposed 80 db μ contour and the Knoxville city boundary. As may be seen, all of Knoxville falls within this contour.

Finally, we come to the proposed derogation of the separation criteria with respect to co-channel WHIQ, Huntsville. With a required spacing of 280.8 kilometers, the proposed spacing to WHIQ is 275.0 kilometers, a 5.8-kilometer (3.6-mile) shortage. Under such circumstances, it is appropriate to provide equivalent protection, so that any interference caused is no greater than that which would be caused if the proposed facility were fully

EXHIBIT A

spaced. The standards for such protection were spelled out in Docket No. 20418.

Exhibit G-1 is a diagram showing how protection is afforded. Essentially, a series of points is established at which the ratio of the desire field strength to the undesired field strength is 28 db, assuming that both stations operate with maximum facilities at the correct spacing. Exhibit G-2 is a tabulation showing that the proposed ERP toward each point does not exceed the allowable ERP. This showing demonstrates that equivalent protection, as it has been traditionally defined, will be more than afforded.

In order to further assure an absence of objectionable interference, we conducted an interference study employing the same methods as are used in DTV allotments, including Longley-Rice propagation calculation. We find that WHIQ has an interference-free Grade B population of 702,231, and the proposed facility would cause predicted interference to 3362 persons within this area. This represents 0.48 percent of the total. Commission policy considers such a percentage negligible when evaluating interference from NTSC stations to DTV stations and would logically apply where the interference would affect another NTSC station.

*

*

*

It is requested herein that the Commission waive §73.610(a) and (b) regarding the spacing to WHIQ, and §73.685(e) regarding the *directional pattern maximum-to-minimum* ratio. It has been demonstrated that the proposed operation would cause objectionable interference to no digital or analog station. However, one must address the questions of whether

EXHIBIT A

or not fully spaced, or less short-spaced, sites are available and the extent to which the public interest would benefit from a grant of this application.

It is a fact that Sharp's Ridge is the only suitable television transmitter site for Knoxville stations. Indeed, one of the Knoxville stations, WBIR-TV, once operated from a different site at which it could achieve greater antenna height, but it eventually relocated to Sharp's Ridge, joining all of the other Knoxville television stations.

Further, Channel 25 is the only remaining channel available for NTSC use in Knoxville, but it must be colocated with DTV Channel 26, which is to be used at Sharp's Ridge. Thus, not only is Sharp's Ridge the only suitable Knoxville site in general, but it is the only suitable site for Channel 25 specifically. If there were a suitable transmitter site 5.8 kilometers east of the proposed site, which is not the case, the WHIQ shortage would be eliminated. However, the Channel 25 analog allotment would then not be within 5 kilometers of DTV Channel 26 and would thus create a new problem.

In addition, although the proposed site is slightly too close to WHIQ, it is, in fact, quite suitable even with respect to co-channel allocations. A site to the east would alleviate the shortage to WHIQ but would place the facility closer to WUNF-DT, Channel 25, Asheville, perhaps making it impossible to protect that station properly. On the other hand, to select a site to the west would simplify the protection of WUNF-DT, but would be closer to WHIQ, making it more difficult to afford equivalent protection to that station. Thus, Sharp's Ridge is the best Channel 25 site for this additional reason.

EXHIBIT A

Sections 73.610(a) and (b) have been waived in the past for shortspacings in excess of that proposed herein. Indeed, the tower proposed for this new facility is also used by WVLT-TV, Channel 8, which was authorized to operate from Sharp's Ridge despite two co-channel shortspacings. Although the proposed shortage is but 2 percent of the normal minimum, WVLT-TV has shortages of 14 and 20 percent. It was determined that the public interest was served by granting the waivers requested by WVLT-TV in order to permit a fourth commercial television station in Knoxville. It is equally in the public interest to grant the instant proposal, which would permit the institution of a fifth commercial station.

With respect to the waiver of §73.685(e), the maximum-to-minimum ratio Rule has been waived a number of times in the past. The main reason for this restriction is that deep pattern suppression is associated with increased ghosting. It is no doubt true that the proposed operation will be subject to more ghosting than is typical, but the proposed pattern was selected in order to properly protect WUNF-DT. Without such protection, a Channel 25 facility in Knoxville could not be authorized at all, ghosting or not.

The institution of an additional television service to the Knoxville market is clearly in the public interest, but only Channel 25 is available, and Channel 25 can be used only as proposed herein. Grant of the requested waivers will have no adverse effect on any other station while bringing a needed new television service to viewers in Knoxville.

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and

EXHIBIT A

correct to the best of my knowledge and belief.

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a horizontal line.

NEIL M. SMITH

July 11, 2000

EXHIBIT B

NTSC ALLOCATION STUDY

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

Channel	Nearest Allotment	Spacing (km)		
		Required	Proposed	Difference
17	WUNE-TV, Linville, NC	31.4	188.4	+ 157.0
18	WCLP-TV, Chatsworth, GA	95.7	156.6	+ 60.9
20	WBXX-TV, Crossville, TN	31.4	38.1	+ 6.7
21	WHNS, Asheville, NC	31.4	145.8	+ 114.4
22	WCTE, Cookeville, TN	31.4	128.4	+ 97.0
23	WELF, Dalton, GA	31.4	176.4	+ 145.0
24*	WKYU-TV, Bowling Green, KY	87.7	252.8	+ 165.1
25	WHIQ, Huntsville, AL	280.8	275.0	- 5.8
26**	WUNL-TV, Winston-Salem, NC	87.7	323.0	+ 235.3
27	Application, Canton, NC	31.4	104.9	+ 73.5
28	WNPX, Cookeville, TN	31.4	178.6	+ 147.2
29	WKSO-TV, Somerset, KY	31.4	151.1	+ 119.7
30	WPBA, Atlanta, GA	31.4	252.3	+ 220.9
32	WNEG-TV, Toccoa, GA	95.7	163.3	+ 67.6
33	WUNF-TV, Asheville, NC	31.4	124.6	+ 93.2
39	WEMT, Greeneville, TN	95.7	109.8	+ 14.1
40	WBSC-TV, Anderson, SC	119.9	213.7	+ 93.8

* There is an unused Channel 24 allotment in Athens, TN. See discussion in Engineering Statement.

** There is a digital allotment on Channel 26 for WATE-DT, Knoxville. This station is to be effectively colocated with the proposed facility.

EXHIBIT C

DTV INTERFERENCE ANALYSIS
PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

<u>Call</u>	<u>Location</u>	<u>Ch.</u>	<u>Interference Losses (Population)</u>				<u>%</u>
			<u>Longley-Rice DTV Population</u>	<u>NTSC & DTV Without Proposal</u>	<u>NTSC & DTV With Proposal</u>	<u>Unmasked Proposal Contribution</u>	
WUNF-DT*	Asheville, NC	25	1,434,861	58,680	62,359	3,679	0.26

* Allotment Facility

SECTION III-C TV Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1.	Channel Number:	<u>25</u>		
2.	Offset:	Plus _____	Minus _____	Zero <u>X*</u>
3.	Zone:	<input type="checkbox"/> I	<input checked="" type="checkbox"/> II	<input type="checkbox"/> III
4.	Antenna Location Coordinates: (NAD 27)			
		<u>36</u> ° <u>00</u> ' <u>36</u> "	<input checked="" type="checkbox"/> N	<input type="checkbox"/> S Latitude
		<u>83</u> ° <u>55</u> ' <u>57</u> "	<input type="checkbox"/> E	<input checked="" type="checkbox"/> W Longitude
5.	Antenna Structure Registration Number:	<u>1043696</u>		
		<input type="checkbox"/> Not applicable	<input type="checkbox"/> FAA Notification Filed with FAA	
6.	Height of Radiation Center Above Mean Sea Level:	<u>678</u>	meters	
7.	Overall Tower Height Above Ground Level:	<u>332</u>	meters	
8.	Height of Radiation Center Above Ground Level:	<u>294</u>	meters	
9.	Height of Radiation Center Above Average Terrain:	<u>367</u>	meters	
10.	Maximum Effective Radiated Power (ERP):	<u>5000</u>	kW	
11.	Antenna Specifications:			
a.	Manufacturer	<u>Dielectric</u>	Model	<u>TUP-14-C3</u>
b.	Electrical Beam Tilt:	<u>0.5</u> degrees	<input type="checkbox"/> Not Applicable	
c.	Mechanical Beam Tilt:	<u>--</u> degrees toward azimuth	<u>--</u> degrees True	<input checked="" type="checkbox"/> Not Applicable
	Attach as an Exhibit all data specified in 47 C.F.R. Section 73.685.			Exhibit No. <u>E</u>
d.	Polarization:	<input checked="" type="checkbox"/> Horizontal	<input type="checkbox"/> Circular	<input type="checkbox"/> Elliptical

*Suggested

EXHIBIT D

PROPOSED OPERATING PARAMETERS

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

SMITH AND FISHER

DIELECTRIC



Date 28 Mar 1997
Call Letters Channel 20
Location
Customer
Antenna Type TUP-14

ELEVATION PATTERN

RMS Gain at Main Lobe	27.3 (14.36 dB)	Beam Tilt	0.50 Degrees
RMS Gain at Horizontal	22.8 (13.58 dB)	Frequency	509.00 MHz
Calculated / Measured	Calculated	Drawing #	14U273050

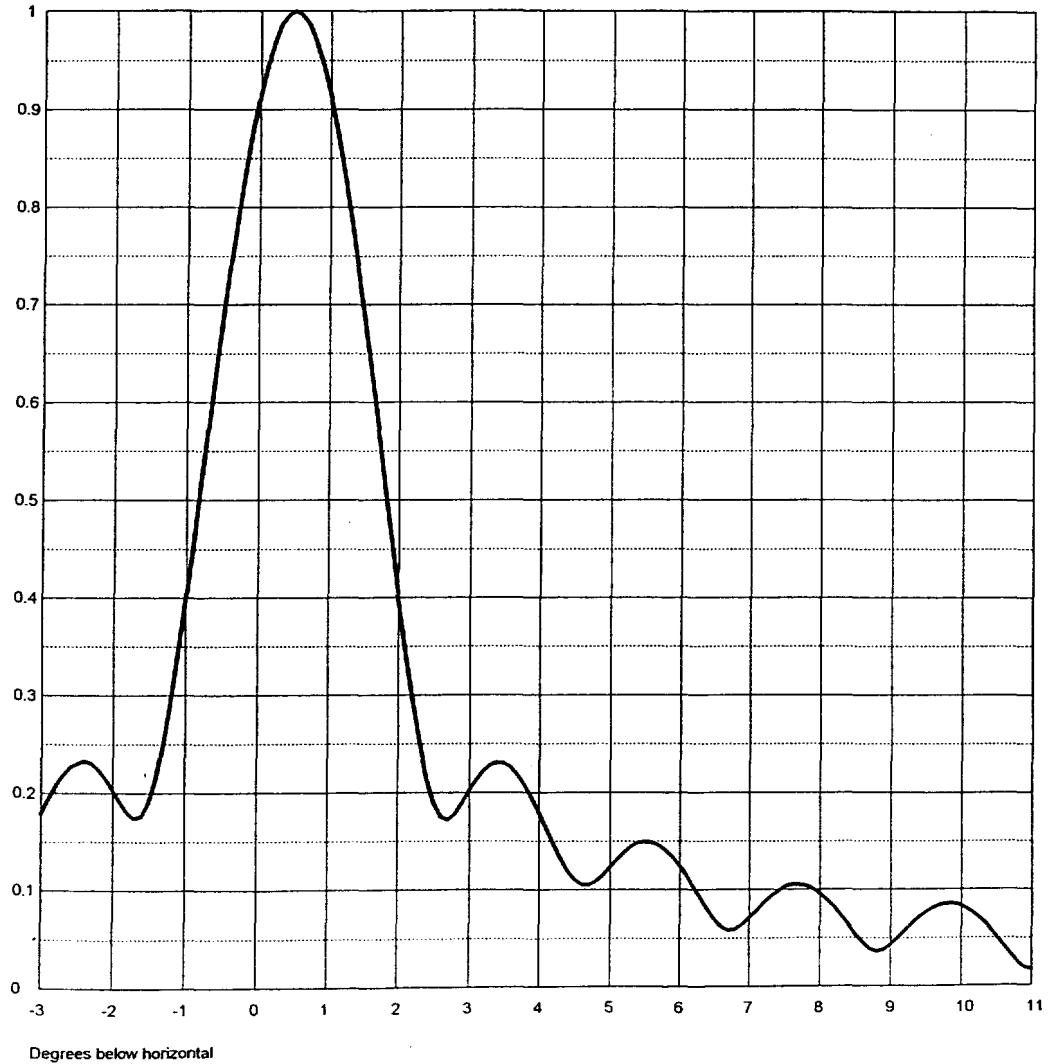


EXHIBIT E-1

VERTICAL RELATIVE FIELD PATTERN

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

SMITH AND FISHER

DIELECTRIC



Date 28 Mar 1997
Call Letters Channel 20
Location
Customer
Antenna Type TUP-14

ELEVATION PATTERN

RMS Gain at Main Lobe	27.3 (14.36 dB)	Beam Tilt	0.50 Degrees
RMS Gain at Horizontal	22.8 (13.58 dB)	Frequency	509.00 MHz
Calculated / Measured	Calculated	Drawing #	14U273050-90

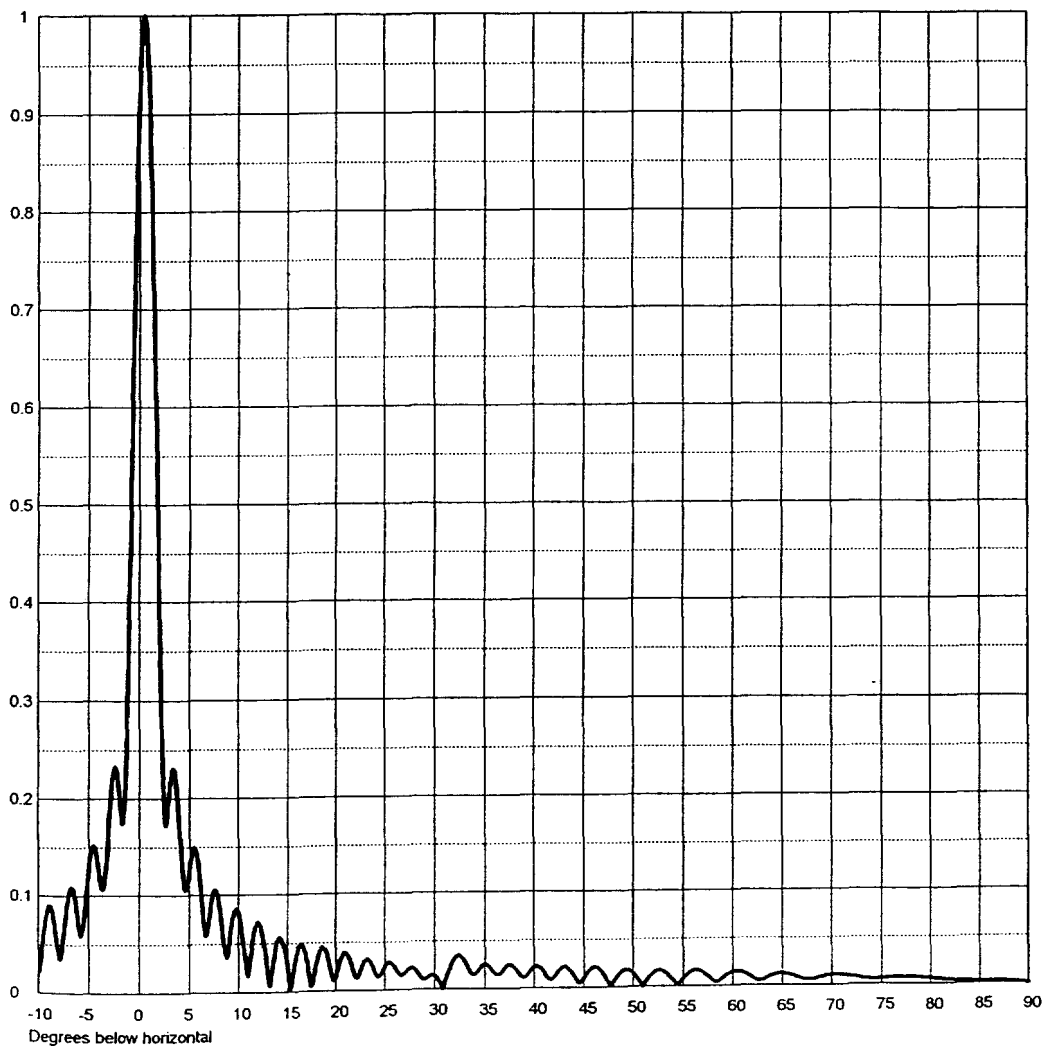


EXHIBIT E-2

VERTICAL RELATIVE FIELD PATTERN

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

SMITH AND FISHER

DIELECTRIC



Date 28 Mar 1997
Call Letters Channel 20
Location
Customer
Antenna Type TUP-C3

AZIMUTH PATTERN

RMS Gain at Main Lobe
Calculated / Measured

1.80 (2.55 dB)
Calculated

Frequency
Drawing #

509.00 MHz
TUP-C3-20

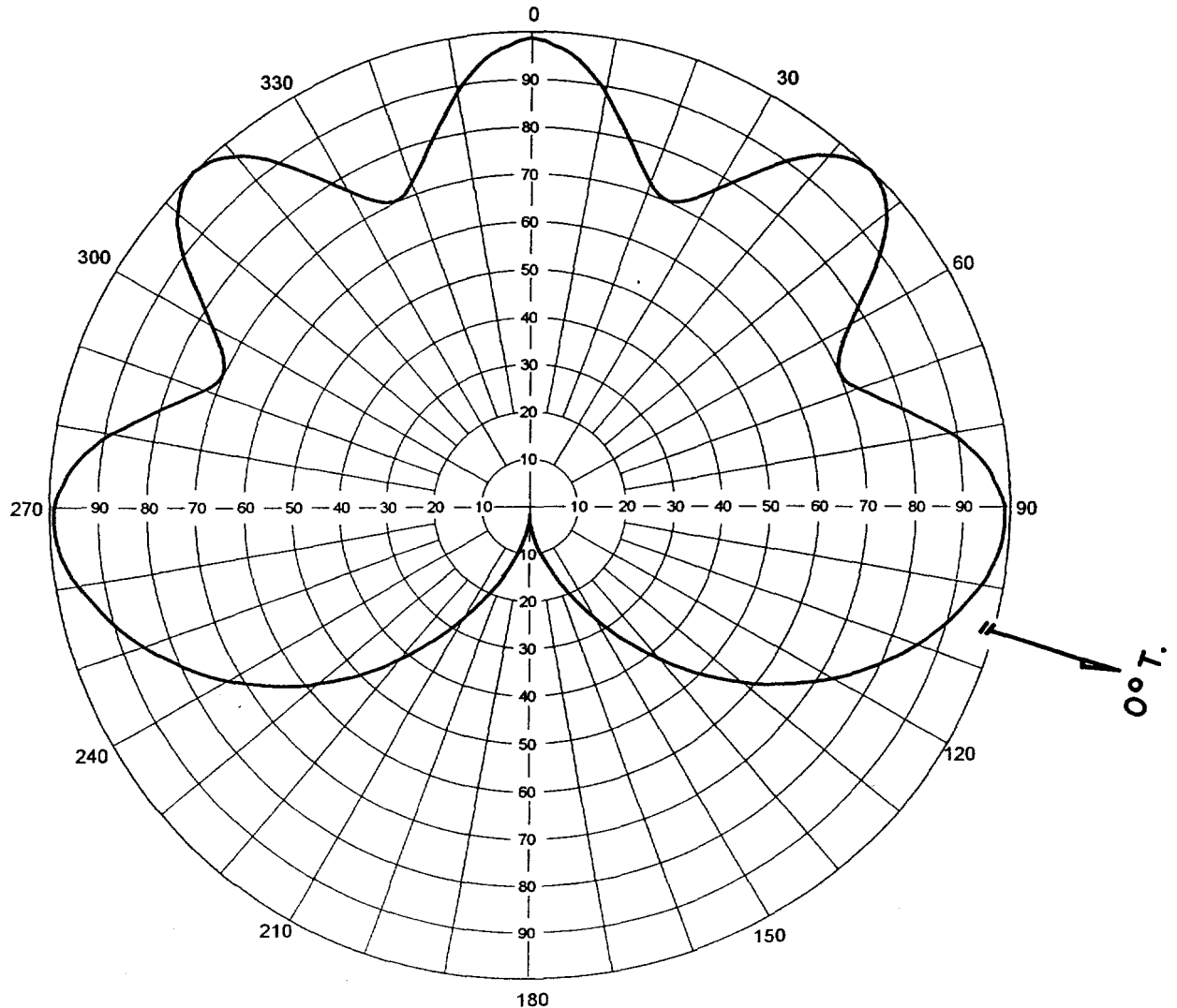


EXHIBIT E-3

HORIZONTAL RELATIVE FIELD PATTERN

**PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE**

SMITH AND FISHER

MAIN LOBE
DIRECTIONAL ANTENNA PATTERN DATA

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>	<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>
0	0.909	36.2	180	0.798	35.0
10	0.795	35.0	190	0.707	34.0
20	0.657	33.4	200	0.873	35.8
30	0.500	31.0	210	1.000	37.0
40	0.343	27.7	220	0.873	35.8
50	0.211	23.5	230	0.707	34.0
60	0.111	17.9	240	0.798	35.0
70	0.044	9.9	250	0.956	36.6
80	0.044	9.9	260	0.956	36.6
90	0.111	17.9	270	0.798	35.0
100	0.211	23.5	280	0.707	34.0
110	0.343	27.7	290	0.873	35.8
120	0.500	31.0	300	1.000	37.0
130	0.657	33.4	310	0.873	35.8
140	0.795	35.0	320	0.707	34.0
150	0.909	36.2	330	0.798	35.0
160	0.984	36.9	340	0.956	36.6
170	0.956	36.6	350	0.984	36.9

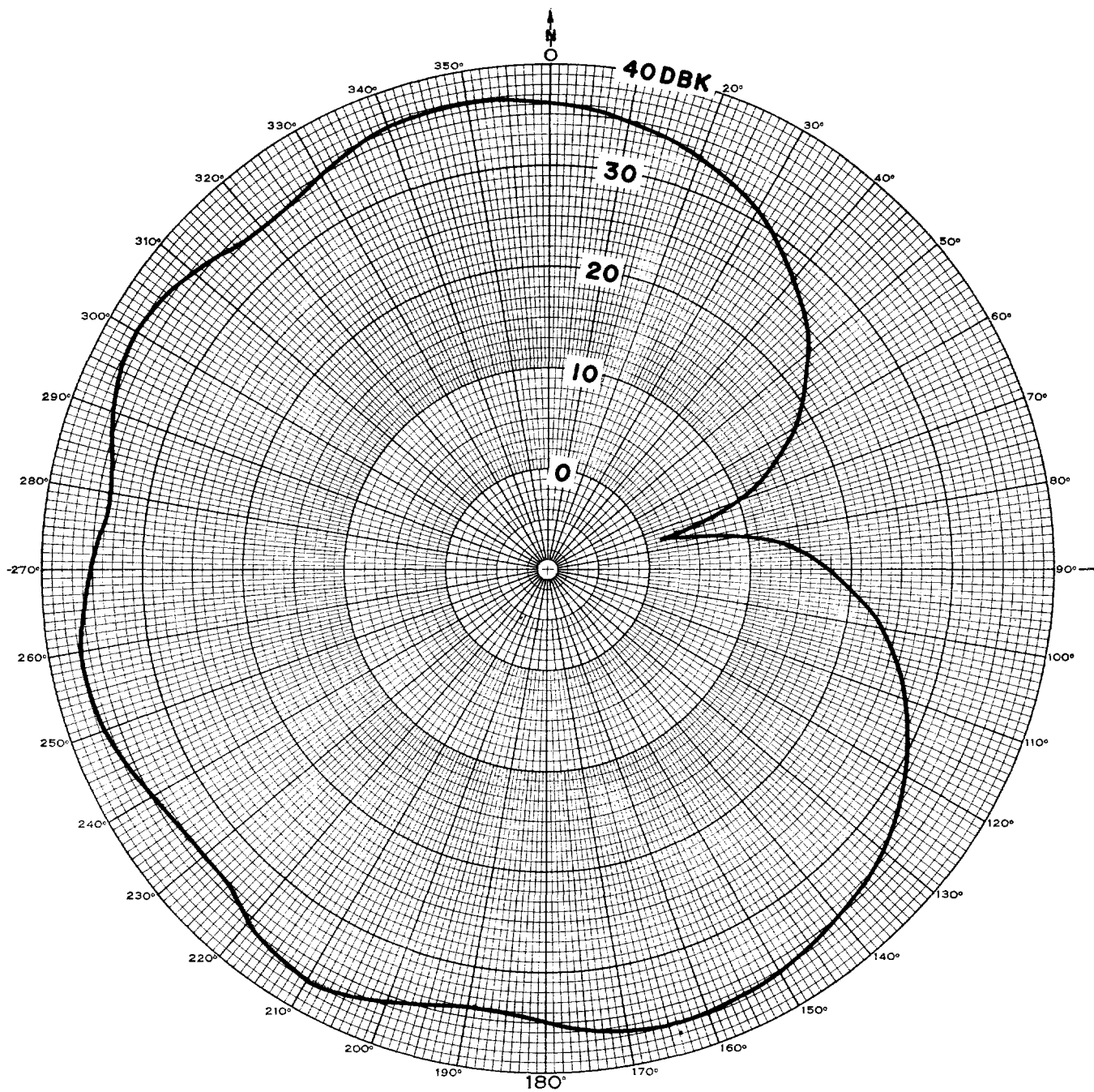


EXHIBIT E-5

MAIN LOBE POWER PATTERN

**PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE**

SMITH AND FISHER

ATLANTA

SECTIONAL AERONAUTICAL CHART
SCALE 1:500,000

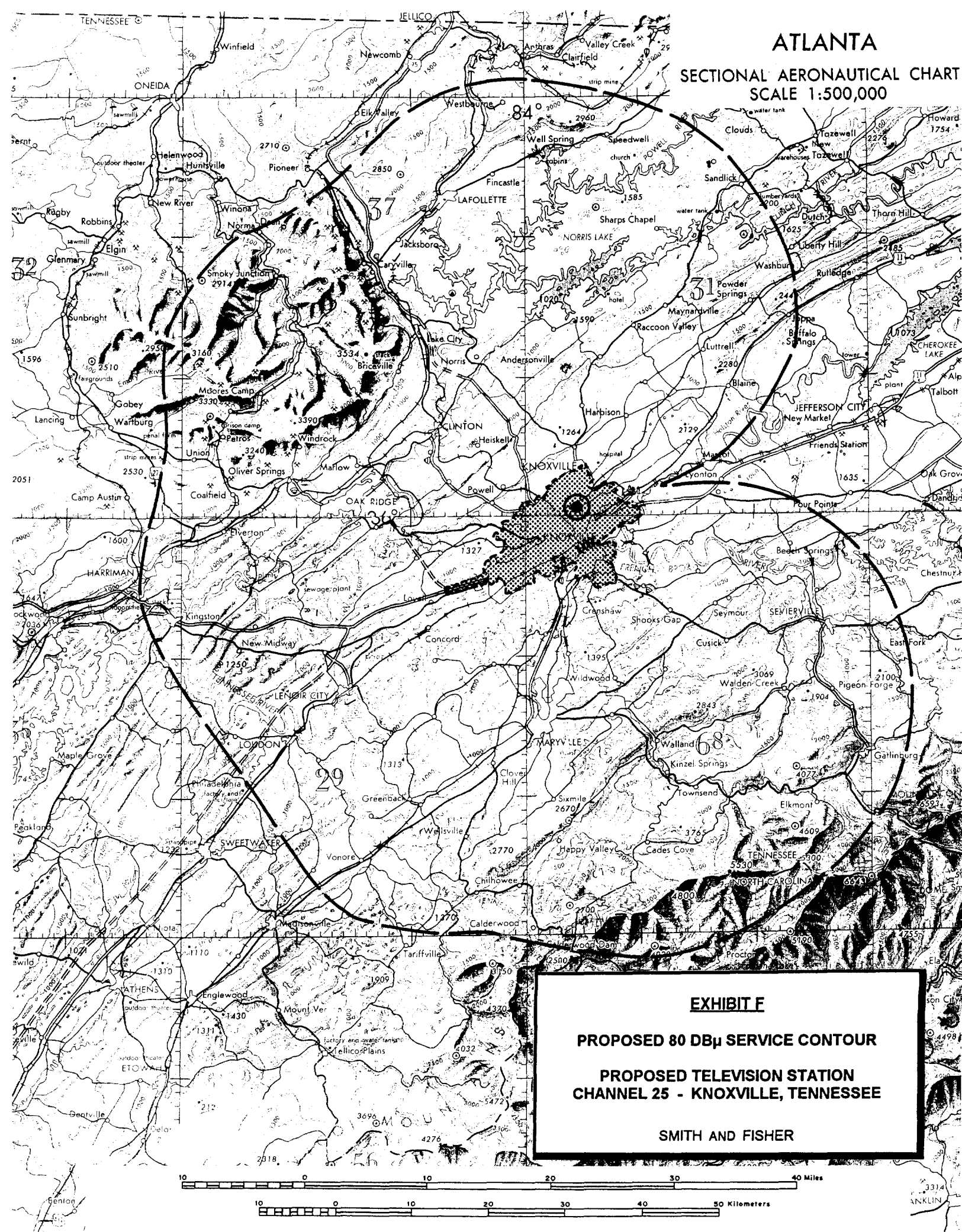


EXHIBIT F

PROPOSED 80 DB μ SERVICE CONTOUR

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

SMITH AND FISHER

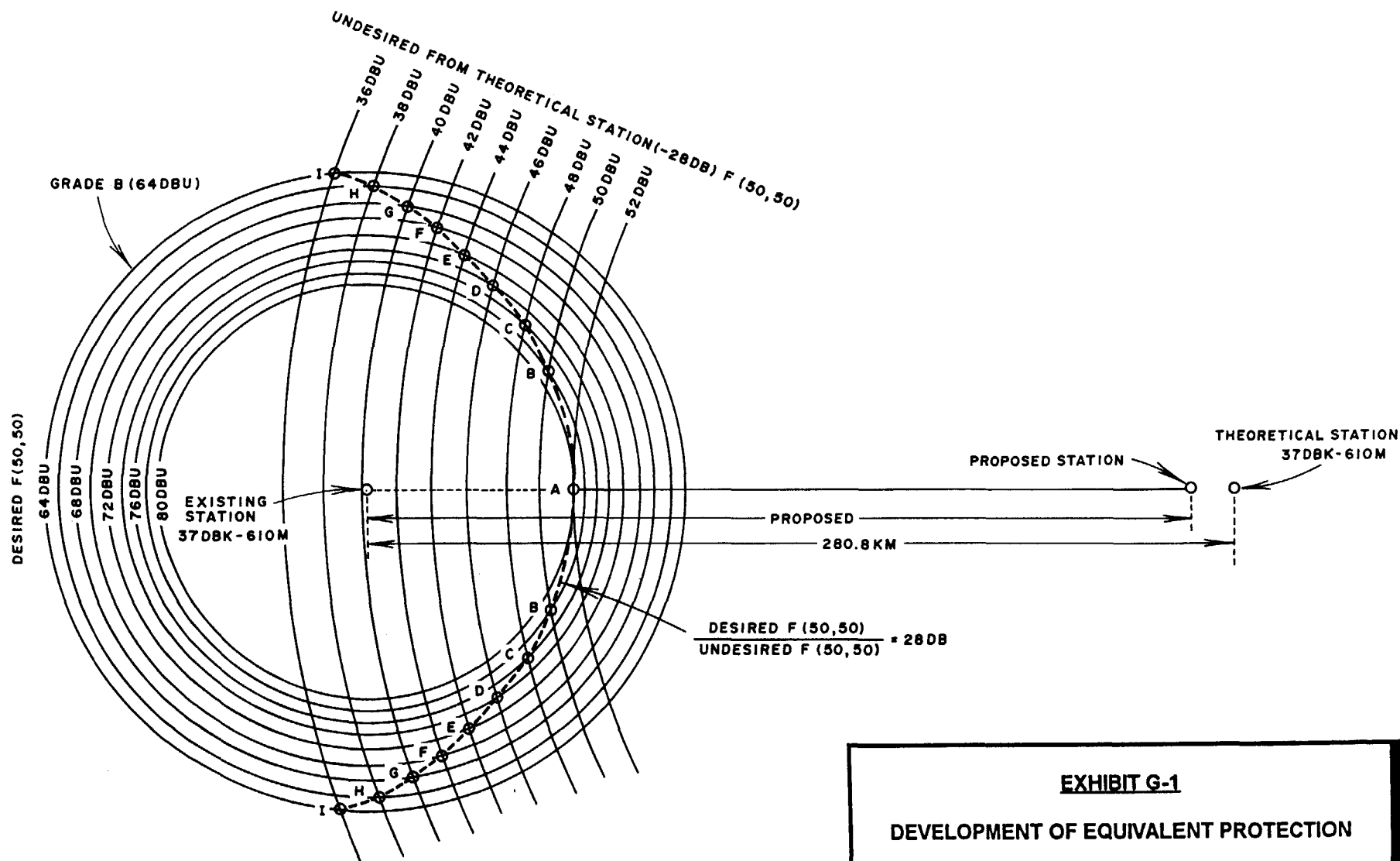


EXHIBIT G-1

DEVELOPMENT OF EQUIVALENT PROTECTION

PROPOSED TELEVISION STATION
CHANNEL 25 - KNOXVILLE, TENNESSEE

SMITH AND FISHER

ALLOCATION STUDY

WHIQ(TV)
CHANNEL 25 - HUNTSVILLE, ALABAMA

Proposed coordinates: 36° 00' 36", 83° 55' 57"

WHIQ coordinates: 34° 44' 14", 86° 31' 46"

Distance: 275.0 kilometers (170.9 miles)

Azimuth from proposed: 239.7° T

<u>Point Number</u>	<u>Azimuth (° T)</u>	<u>Distance</u>		<u>Allowable Field (dbu)</u>	<u>Allowable ERP (dbk)</u>	<u>Proposed ERP (dbk)</u>
		<u>(km.)</u>	<u>(mi.)</u>			
A	239.7	206	128	52	39	35.1
B	228.9-250.5	217	135	50	39	34.1-36.6
C	225.7-253.7	229	142	48	39	34.6-36.8
D	223.0-256.4	243	151	46	39.5	35.1-36.8
E	221.2-258.2	254	158	44	39.5	35.6-36.7
F	220.0-259.4	267	166	42	39	35.8-36.6
G	219.2-260.2	278	173	40	39.5	36.0-36.6
H	218.8-260.6	290	180	38	39	36.0-36.6
I	218.8-260.6	304	189	36	39	36.0-36.6

Statement of Eligibility for
Class A Low Power Television Station Status
Filed by WDSI License Corp.

Jan. 26, 2000 5:16PM

No. 6774 P. 2/2

Federal Communications Commission
Washington, D. C. 20554STATEMENT OF ELIGIBILITY
FORApproved by (FIM)
Signature

CLASS A LOW POWER TELEVISION STATION STATUS

1. Legal Name of LPTV Licensee WDSI License Corp.		
Mailing Address 225 City Line Avenue, Suite 200		
City Bala Cynwyd	State or Country (if foreign address) PA	ZIP Code 19004
Telephone Number (include area code) (610) 934-7000		E-Mail Address (if available) sblank@pgtv.com

LPTV Station: Facility ID Number 52078 Call Sign WXMS-LP (Formerly W25CR)

Community of License: City Cleveland State TN

2. Contact Representative (if other than Licensee): David Oxenford	Company or Firm Name: Fisher Wayland et. al.
Telephone Number (include area code): (202) 659-3494	E-Mail Address (if available): doxenford@fwclz.com

3. For the 90-day period ending November 28, 1999, has the low power television licensee:

- a. broadcast a minimum of 18 hours per day? See Exhibit 1 ☒ Yes ☐ No
- b. broadcast an average of 3 hours or more per week of programming produced within the market area served by the station or by commonly-controlled stations? ☒ Yes ☐ No
- c. operated its station in full compliance with 47 Code of Federal Regulations Section 74.701 et seq., the Commission's regulations applicable to low power television stations? ☒ Yes ☐ No

If the answers to Questions 3(a), (b), and (c) is YES, the LPTV licensee may submit this statement to obtain a certificate of eligibility for Class A LPTV station status.

If the answer to Question 3(a), (b), or (c) is NO, the LPTV licensee may submit an Exhibit, setting forth fully the extent to which its station does not meet the above eligibility criteria and the reasons nevertheless that warrant a Commission determination that issuance of a certificate of eligibility would serve the public interest, convenience and necessity.

Exhibit No
1

4. Does the LPTV licensee certify that neither the licensee nor any party to the licensee, as defined in 47 Code of Federal Regulations Section 1.2002(b), is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862? ☒ Yes ☐ No

5. Certification. I certify that I have examined this Statement and that, to the best of my knowledge and belief, all representations in this Statement are true, correct and complete.

Typed or Printed Name of Person Signing Scott A. Blank	Typed or Printed Title of Person Signing Vice President
Signature <i>Scott Andrew Blank</i>	Date 1/27/00

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

**WDSI License Corp.
WXMS-LP, Cleveland, Tennessee**

EXHIBIT 1

WDSI License Corp. ("WDSI License"), licensee of low power television station WXMS-LP (formerly W25CR), Cleveland, Tennessee, hereby requests certification of eligibility for Class A status. While WXMS-LP has been rebroadcasting the signal of commonly-owned WDSI(TV), Chattanooga, Tennessee, a Fox affiliate, it has provided a significant portion of the Cleveland community with local and network programming. WDSI(TV), which is located in the same Designated Market Area as WXMS-LP, produces and broadcasts an average of three hours of local news per day and airs local public service announcements. All of this local programming is rebroadcast by WXMS-LP. Due to mountainous terrain surrounding the Cleveland area, the local and network programming provided by WDSI(TV) would be unavailable to a number of Cleveland residents without WXMS-LP. Therefore, this station should be considered a Class A television station.

If, for any reason, the Commission determines that the certifications, based on the information provided above, do not entitle the station to certify as to its status, the information provided herein should nevertheless demonstrate that the public interest mandates that this station be given Class A status. The Community Broadcasters Protection Act provides for qualification of Class A status where "the Commission determines that the public interest, convenience and necessity would be served by treating the station as a qualifying low-power television station." *See The Community Broadcasters Protection Act of 1999*, Section 5008(c)(2) (Nov. 29, 1999). In this instance, the public interest clearly would be served by granting WXMS-LP a Certificate of Eligibility for Class A status to protect the ability of Cleveland residents to receive important local and network signals via a local station. A

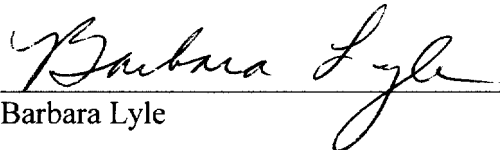
Accordingly, WDSI License respectfully requests that the Commission grant WXMS-LP a Certificate of Eligibility for Class A status.

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 17th day of July, 2000, copies of the foregoing "Petition for Rulemaking" were hand delivered to the following:

Mr. Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C347
445 Twelfth Street, S.W.
Washington, DC 20554

Mr. Keith Larson
Assistant Chief, Engineering
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The Portals II, Room 2-C420
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Barbara Lyle